IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4543 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HIRALAL NAINAJI PHADIYA

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for M/S THAKKAR ASSOC. for Petitioner

MR HB PUNANI AGPfor Respondent No. 1, 2 & 3

MR MIA SHAIKH Central Govt. Standing Counsel for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 21/04/2005

ORAL JUDGEMENT

1. By way of this Special Civil Application, the

petitioner has challenged the order passed by the District Magistrate, Surat, on 19th of February, 2005, in exercise of powers conferred upon him under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the PBM Act" for short) directing the detention of the petitioner under the above Act because the District Magistrate, Surat, reached to the satisfaction that it was necessary to prevent the petitioner from acting in any manner prejudicial to the maintenance of supplies of essential commodities to the community. The petitioner came to be detained in pursuance of the above said order from 25th of February, 2005.

2. The grounds of detention as placed on record reveal that the present petitioner along with one Shivlal Hasmukhlal Shah at village Sathena, Tal.Kamrej, District Surat, in one shop, owned by Shivlal Hasmukhlal Shah and in possession of present petitioner, without obtaining any licence under Essential Commodities Act, obtained Naphtha, which is of petroleum product, unauthorisedly, and were involved in selling such Naphtha to vehicle owners for mixture of fuel. On 28th of September, 2004, on receiving secret information, the said shop was raided by a team of Supply Officers of the District, and as mentioned in the grounds of detention, in all 1988 liters of Naphtha was found in the said shop. Near the shop, on the western side of Akshardam Society Shopping Centre, quantity of Naphtha as referred to above, was found and was physically verified by team of officers in the presence of panchas. The said quantity along with barrels, etc. were seized. It was alleged that in the statements of the petitioner recorded by the authorities on 28.9.04, the petitioner, in presence of panchas, admitted that the petitioner obtained the quantity of Naphtha from oil tankers at National Highway No.8 and stocked the same at above mentioned place. The said Naphtha in turn was sold to vehicle owners in the mixture of fuel. The petitioner admitted that the said shop was taken on rent of Rs.1000/- per month by him from one Shri Shivlal Hasmukhlal Shah. During the raid, Shri Shivlal Hasmukhlal Shah was also called and his statement was also recorded, who denied to have any connection with the business of the petitioner, though said that the shop owned by him and was taken on rent by the petitioner. The samples from seized Naphtha were sent to laboratory and it was found that the said substance was petroleum Hydro Carbon Solvent. Some statements of vehicle owners were recorded during inquiry and it was found that on open place - Opposite Ghanshyam Motors, Village Sathena,

Taluka Kamrej, District Surat, the petitioner was dealing in selling Naphtha. During inquiry, two other shops, bearing No.3 and 4, situated at village Sathena, Taluka Kamrej, District Surat, owned by one Dahyabhai Vaghabhai Bharvad were also checked and 51 barrels and petroleum products Naphtha was found, which in inquiry, according to officers, belonged to the petitioner and one Shivlal Hashmukhlal Shah. In the grounds of detention, the details of petroleum product Naphtha seized from shop Nos. 3 and 4 are given, and accordingly, in all 10976 liters of petroleum product Naphtha was seized from the said shops. The said two shops were given on rent to the present petitioner and to Shivlal Hashmuklal Shah by Dahyabhai Vaghabhai Bharvad, according to his statement recorded by authority on 21st of January, 2005. The sponsoring authority thereafter made proposal to the detaining authority and detaining authority after verifying the papers and material placed before him, came to the conclusion that in breach of provisions of Essential Commodities Act and Gujarat Essential Commodities Articles (Licence, Control and Supply) Orders, 1981, the present petitioner in collusion with one Shivlal Hashmukhlal Shah obtained Naphtha and were indulged in activities of selling the same to vehicle owners. A prosecution was launched against the petitioner and other alternative remedies also were taken into consideration by the detaining authority. After considering other remedies, the detaining authority came to the conclusion that such remedies were insufficient to prevent the illegal activities of the petitioner which were prejudicial to the maintenance of supplies of commodities essential to the community. The detaining authority also came to the conclusion that there was no other alternative except to detain the petitioner under the PBM Act to prevent his above mentioned prejudicial activities forthwith. The detaining authority therefore passed the order of detention as aforesaid which is under challenge in this petition.

4. Learned Advocate Mr.D.M.Thakkar for petitioner, learned AGP Ms. Hansa B Shah for respondent Nos. 1, 2 and 3 and learned Additional Central Govt. Standing Counsel Mr. M.I.A. Sheikh for respondent No.4 were heard in detail. The affidavit-in-reply as filed by the detaining authority as placed on record is also taken into consideration.

5. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by learned AGP and learned Addl. Central Govt. Standing Counsel, it appears that this

petition can be examined and disposed of on the ground that whether the order of detention vitiates on account of taking into consideration extraneous grounds and material by the detaining authority.

6. It becomes clear that earlier also the order of detention was passed against the present petitioner on 27th of April, 2004. Against the said order, the petitioner preferred Spl.C.A. No.7313 of 2004, which was disposed of by this Court on 11th of August, 2004 and the petitioner was released. After referring this fact, in the grounds of detention in para 4(10), the detaining authority further observed that so releasing by this court, the petitioner started his illegal activities in collusion with one Shri Shivlal Hasmukh Shah, and was caught red-handed during the raid carried out by the District Supplies Officers on 28th of September, 2004. Referring all these, the detaining authority further observed in the grounds of detention that the above mentioned facts proved that the petitioner was habitual in indulging the activities which were prejudicial to the maintenance of supplies of commodities essential to the community.

7. The question therefore arises as to whether referring to the first order and conduct mentioned therein which came to be to quashed by a court competent, a second order can be passed. In other words, whether the conduct earlier of the detenu can be made one of the grounds of the subsequent order of detention, may be on fresh grounds. In the matter of CHHAGAN BHAGWAN KAHAR vs. N.L. KALNA as reported in AIR 1989 SC 1234, the Apex Court observed as under in para -15.

" Mr. Poti has sought to explain the statement of the detaining authority made in his counter saying that the earlier proceedings was considered only to a limited purpose of taking note of the detenu's continued involvement of bootlegging activities; but the entire grounds of earlier detention as they were, were not considered. We are unable to accept this explanation because the detaining authority, in the counter, in clear terms had expressed that he considered the earlier grounds of detention also. Incidentally, it was brought to our notice that a copy of the earlier grounds of detention was also one of the documents furnished to the detenu in the present case which confirms the fact that the detaining authority has considered the earlier grounds of detention along with other documents

> for drawing his requisite subjective satisfaction for passing this impugned order. In other words, the earlier grounds of detention dated 2.1.987, quashed by the High Court was one of the material documents considered by the detaining authority in drawing his subjective satisfaction. Therefore, we hold that this order of detention is vitiated, on the ground that the detaining authority has taken into consideration the grounds of earlier detention order along with other materials for passing this impugned order. Hence, the order is liable to be set aside. Accordingly, we quash the detention order on this ground and direct that the detenu be set at liberty forthwith if his detention is not required for any other case. "

8. Having gone through carefully para 4(10) of the grounds of detention, it becomes clear that the detaining authority took into consideration the earlier grounds of detention, for which the order of detention was passed against the detenu and was quashed by this Court. The reference of the detaining authority after stating the facts of the earlier order and quashing of the same by this court, that the petitioner was habitually indulging himself in blackmarketing activities prejudicial to the maintenance of supplies of commodities essential to the community, amply makes it clear that the detaining authority considered the grounds of earlier detention in the present grounds of detention. In the matter of SALIMKHAN @ CHHOTE JABBAR HANIFKHAN PATHAN vs. STATE OF GUJARAT AND ORS., as reported in 2000(2) GLH 184, in similar circumstances, this court relying upon the above said decision of the Apex Court in the matter of Chhagan B. Kahar (supra), quashed the order of detention and in the present case also the order of detention is required to be quashed and set aside on this ground alone.

9. In the result, the petition is allowed. The order passed by the District Magistrate, Surat, on 19th of February, 2005, against the petitioner in exercise of powers under Section 3(2) of the PBM Act is hereby quashed and set aside. The detenu - Hiralal Nainaji Phadiya is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

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